Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1977

Docket No. 77-555

RUTH E. BUCK,

Petitioner,

vs.

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK: Dr. Bernard E. Donovan—former Superintendent of Schools, Dr. Nathan Brown—former Superintendent of Schools, Dr. Irving Anker—former Superintendent of Schools, G. Gary Sousa—Law Secretary, Sheldon Wein—Teacher at Franklin K. Lane High School, Mary Cohen—Assistant Principal at Franklin K. Lane High School, Morton Selub—Principal at Franklin K. Lane High School, Elizabeth O'Daly—District Superintendent of School District #19, Dr. Jacob Zack—Assistant Superintendent in charge of High Schools, Dr. Beverly Lipschitz—Guidance Supervisor of School District #19, Daisy K. Shaw—Director of the Bureau of Educational and Vocational Guidance, Murray Cohn—Principal—High School of Commerce (now Brandeis High School), Evelyn Konigsberg—former Principal of Washington Irving High School, Charles Foy—Receptionist—Medical Division, Sarah Braphart—Secretary to Medical Director, Dr. Naomi Pool—Acting Assistant Medical Director, Dr. Murray G. Fletcher—former Ass't Medical Director, Dr. Sidney Leibowitz—Medical Director, Dr. Sidney Rosenberg—Asst. Superintendent in charge of Personnel, Dr. Theodore H. Lang—Deputy Superintendent in charge of Personnel, Allegedly Honorable Daniel Gutman—Trial Examiner, each of the afore-mentioned individually and as employees of the City of New York;

and

(See inside of cover for additional defendants.)

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
29 CENTER ST., BATAVIA, N. Y. 14020
716-343-0457

THE DIVISION OF HUMAN RIGHTS OF THE STATE OF NEW YORK: Joseph Sperazi—Field Representative, Walter P. Offut, Jr.—Senior Field Representative, Jean MacPherson—Regional Director, Arthur Stern—Area Director, each of the afore-mentioned individually and as employees of the Division of Human Rights of the State of New York;

and

THE COMMISSION ON HUMAN RIGHTS OF THE CITY OF NEW YORK: John Doe and James Doe (said names of John Doe and James Doe being fictitious, their true names being unknown to plaintiff), Robert Perez-Wilson—Acting Chief, Investigations Division, each of the afore-mentioned individually and as employees of the Commission on Human Rights of the City of New York;

and

THE NEW YORK STATE SUPERVISORY COMMITTEE: Norman Frankel—Attorney and former Investigator, Harold G. Israelson, Attorney and former Chairman, each of the afore-mentioned individually and as employees of the New York State Supervisory Committee;

and

THE CORPORATION COUNSEL OF THE CITY OF NEW YORK: Edith A. Gordon—attorney, Charles D. Maurer—attorney, each of the afore-mentioned individually and as employees of the Corporation Counsel of the City of New York;

and

THE DISTRICT ATTORNEY OF THE BOROUGH OF BROOKLYN: Jane Jones and John Jones and James Jones and Jack Jones (said names being fictitious, their true names being unknown to plaintiff), each of the afore-mentioned individually and as employees of the District Attorney of the Borough of Brooklyn;

and

THE DISTRICT ATTORNEY OF THE BOROUGH OF MANHATTAN: John Smith (said name of John Smith being fictitious, his true name being unknown to plaintiff), Michael Alan Richman, each of the afore-mentioned individually and as employees of the District Attorney of the Borough of Manhattan;

and

Abraham Mark Levien—Attorney; William Goffen—Attorney; David Lubash—Attorney; Marjorie O'Connell—Attorney; Allegedly Honorable Frederick Backer—Justice of the Supreme Court of the State of New York—Borough and County of Manhattan—individually;

and

others; whose identities are not ascertained,

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Defendants.

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Defendants.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The New York State Supervisory Committee, Norman Frankel and Harold G. Israelson, individually and as employees of the New York State Supervisory Committee, respectfully pray that the petition herein for a writ of certiorari to the Court of Appeals for the Second Circuit be denied.

Opinions Below

The opinion of the District Court for the Eastern District of New York which granted judgment dismissing the complaint against respondents New York State Supervisory Committee, Harold G. Israelson and Norman Frankel is not reported but appears in the Appendix to Appellant's Petition for a Writ of Certiorari on pages A-23 to and including A-36. The opinion of the Court of Appeals for the Second Circuit is reported at 553 F 2d 315. The asserted basis for jurisdiction is Title 28 U.S.C. section 1254, subdivision 1, which authorizes petitions

for a writ of certiorari from final determinations of the various circuit Courts of Appeals.

Questions Presented

Whether a complaint containing vague and conclusory allegations of conspiracy was properly dismissed against the New York State Supervisory Committee, Harold G. Israelson and Norman Frankel.

Constitutional Provisions and Statutes Involved

Appellant asserts that respondents had participated in a conspiracy to violate her civil rights in violation of sections 1983, 1985 and 1986 of the Civil Rights Act (Title 42 U.S.C. section 1983, *et seq.*).

Statement of the Case

On or about November 17, 1968, Dr. James E. Allen, Jr., then Commissioner of Education of the State of New York, appointed respondent Harold G. Israelson, together with Walter N. Straley and John Barnell as a State Supervisory Committee with jurisdiction throughout the New York City public school system and charged said Committee with the responsibility for promptly investigating instances where there was an allegation that a board, school officer or employee within the New York City school system had acted in violation of the State trusteeship created by the Commissioner of Education for the Ocean Hill-Brownsville local school district in the City of New York, or in violation of agreements entered into among the New York City Board of Education, the United Federation of Teachers and the Council of Supervisory Associations or had otherwise failed to take appropriate action to enforce recognition of the rights of

teachers and other professional personnel and to provide protection from unlawful intimidation or harassment.

The State Supervisory Committee was created under the executive authority of the Commissioner pursuant to sections 301 and 305 of the Education Law. Although given responsibility for investigating claims against a board, school officer or employee regarding any failure to take appropriate action to enforce the rights of teachers and other professionals within the system, the Committee had no direct power to conduct formal disciplinary hearings or other proceedings against school officers or employees but could after investigation issue appropriate orders to the then New York City Superintendent of Schools for remedial or curative action.

On or about January 1, 1969, appellant filed a complaint with said Committee, charging, in substance, that she had been harassed and discriminated against by her Assistant Principal and by other school officials.

Respondent Norman Frankel, a senior investigator employed by the New York State Education Department was assigned to investigate appellant's charges of intimidation and harassment. After a thorough investigation, the investigator concluded that there was insufficient evidence to warrant a charge of harassment. Thereafter, the State Supervisory Committee closed its file.

ARGUMENT

1. The complaint was properly dismissed.

Appellant Buck's complaint alleges that the named respondents violated her civil rights in violation of Title 42 U.S.C., section 1983 by failing to direct the then Superintendent of

Schools of the New York City School District to take action to halt what Ms. Buck characterized as harassment and intimidation directed against her as a result of her refusal to participate in a teachers' strike. Such section authorizes a suit against any "person" who, under color of state law, deprives any citizen of his constitutional rights. Judge Judd properly concluded that the New York State Supervisory Committee was not a "person" within the purview of such section (*Monroe v. Pape*, 365 U.S. 187; *Kenosha v. Bruno*, 412 U.S. 507, 37 L.Ed. 2d 109; *Monell v. Dept. of Social Services of City of New York*, 532 F.2d 259; *O'Reilly v. Wyman*, 305 F. Supp. 228). Furthermore, the New York State Supervisory Committee is an administrative arm of the State of New York which would be compelled to absorb any judgment against the Committee, its officers and employees. This action is in reality a suit for damages against the State of New York, which action is prohibited by the Eleventh Amendment to the United States Constitution (*Edelman v. Jordan*, 415 U.S. 651, 39 L.Ed. 2d 662). Thus, the complaint was properly dismissed on motion against appellee New York State Supervisory Committee.

We respectfully submit that the Court of Appeals for the Second Circuit did not err by affirming Mr. Justice Judd's grant of summary judgment in favor of the individual respondents, Harold G. Israelson and Norman Frankel. An examination of the exhibits annexed to appellees' answer, which answer and exhibits incorporated therein are annexed hereto as an Appendix to this Brief in Opposition, reveals that respondent Frankel conducted extensive discussions with Ms. Buck and actively investigated her claim that she was being subjected to illegal harassment and discrimination. His analysis of her claims with respect to alleged manipulation of her guidance caseload, prepared during the course of

numerous conferences with Ms. Buck, appears in various memoranda annexed as exhibits to the Answer. These memoranda are reproduced in the Appendix hereto.

Judge Judd held, and we submit properly so, that Ms. Buck's complaint failed to state facts sufficient to sustain the contention that she had been discriminated against as a member of the White-Anglo-Saxon-Protestant ethnic group. As Judge Judd noted, she alleged no facts which indicate any specific violation by the State Supervisory Committee or the individual named respondents. Judge Judd stated:

> "The sole factual basis for plaintiff's assertion of ethnic discrimination is the broad allegation of conspiracy found in her complaint, couched in the language of Sections 1983 and 1985. This court held in its Memorandum and Order of February 17, 1972 that vague and conclusory allegations are insufficient to support a claim under the Civil Rights Act. *Powell v. Workmen's Compensation Board*, 327 F.2d 131, 137 (2d Cir., 1964).
>
> "Plaintiff has also failed to give any factual support for her assertion that the State Supervisory Committee or the named individuals discriminated against her for her refusal to partake in strike activities."

In *Snowden v. Hughes*, 321 U.S. 1, the United States Supreme Court held that where an individual claims that others have violated his rights to equal protection of the law, he must set forth facts tending to show that the discrimination practice was "intentional or purposeful." Where damages are sought under the Civil Rights Act for an alleged denial of equal protection, evidence of purposefulness is still necessary. *Skolnick v. Spolar*, 317 F.2d 857; cert. den., 375 U.S. 904.

In *Morpurgo v. Board of Higher Education in City of New York*, 423 F.Supp. 704, Judge Weinfeld in the United States District Court for the Southern District of New York, noted:

"But were the vague, conclusory allegations contained in the complaint deemed sufficient to withstand a motion to dismiss, an unwarranted burden of defense would be placed on the movants. Thus, in the Second Circuit, complaints based on the conspiracy provisions of the Civil Rights Act cannot rest on vague and conclusory allegations but must 'allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy.' Similarly, when a direct deprivation of rights is claimed under section 1983, the plaintiff must allege the defendant's direct and personal responsibility for the purportedly unlawful conduct of his subordinates. This standard has been applied when federal officials are sought to be held liable in private suits based on causes of action arising under the Constitution. The second amended complaint falls far short of compliance with these standards.

"Although pro se civil rights complaints must be viewed with some latitude, liberal construction of pleadings should not be permitted to override completely the rights of defendants. Plaintiff simply fails to support her allegations with any factual details that—even imaginatively considered—could connect the federal defendants to any conspiracy to deprive her of her rights or to any actual deprivation of her rights. The acts alleged in furtherance of the purported conspiracy are mere speculations not supported by factual averments and, in any event, are not alleged with particularity." (at pages 711-712).

It is clear from the record that Ms. Buck was afforded a complete documented investigation of her charges of harassment. It cannot seriously be asserted that their mere failure to agree with appellant's charges "obstructed justice" by choosing to believe what the officials records at the school to which Ms. Buck had been assigned revealed, rather than to

Ms. Buck's own personal records. Such refusal to *recommend* charges, where such action lies within the discretion of the agency, is not actionable (*Green v. City of Glen Cove,* 332 F.Supp. 916). The Court of Appeals properly affirmed dismissal of the Complaint.

Conclusion

For the foregoing reasons, respondents New York State Supervisory Committee, Israelson and Frankel respectfully submit that the decision of the Court of Appeals for the Second Circuit affirming a grant of summary judgment in favor of the named respondents herein should be affirmed.

Dated: Albany, New York
October 27, 1977

Respectfully submitted,

ROBERT D. STONE,
Attorney for Appellees
New York State Supervisory Committee, Israelson and Frankel,

By: .....
Lawrence W. Reich, Esq.,
of Counsel,
Office and Post Office Address,
State Education Building,
Albany, New York 12234,
(518) 474-8864.

APPENDIX

Answer

UNITED STATES DISTRICT COURT

Eastern District of New York

RUTH E. BUCK,

Plaintiff,

v.

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK; . . . the New York State Supervisory Committee; Norman Frankel, Harold G. Israelson, each of the State Supervisory Committee; . . .

Defendants.

Index No. 71 C 954

Defendants, the STATE SUPERVISORY COMMITTEE, NORMAN FRANKEL and HAROLD G. ISRAELSON, by Robert D. Stone, their attorney, for their joint answer to the complaint do allege as follows:

FIRST: Upon information and belief, deny that defendants have jointly or severally deprived, withheld or obstructed plaintiff in the exercise of her legal rights, all as alleged in paragraph "1." of the complaint.

SECOND: Deny knowledge sufficient to form a belief with respect to the truth of each and every allegation contained in paragraph "2." of the complaint except admit that defendant,

the STATE SUPERVISORY COMMITTEE was duly established in November, 1968; that defendant ISRAELSON was designated to be the Chairman of the said Committee; that defendant FRANKEL was assigned to the staff of said Committee as a senior investigator.

THIRD: Deny knowledge sufficient to form a belief with respect to each and every allegation contained in paragraphs "3.", "4.", "5." and "6." of the complaint except admit that plaintiff is certified by the New York State Education Department as a secondary school supervisor and as a secondary school principal, as alleged in paragraph "3." of the complaint.

FOURTH: Deny knowledge sufficient to form a belief with respect to the truth of each and every allegation contained in paragraph "7." of the complaint except admit that defendant ISRAELSON on behalf of the STATE SUPERVISORY COMMITTEE notified petitioner that she had not demonstrated illegal harassment and that as a result thereof, no hearing officer would be designated.

AS AND FOR A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE DEFENDANTS ALLEGE:

FIFTH: That on November 17, 1968, Dr. James E. Allen, Jr., then Commissioner of Education of the State of New York, appointed defendant HAROLD G. ISRAELSON, together with Walter N. Straley and John Barnell as a STATE SUPERVISORY COMMITTEE with jurisdiction throughout the New York City public school system and charged said COMMITTEE with the responsibility for promptly in-

vestigating instances where there was an allegation that a board, school officer or employee within the New York City school system had acted in violation of the State trusteeship created by the Commissioner of Education for the Ocean Hill-Brownsville local school district in the City of New York, or in violation of agreements entered into among the New York City Board of Education, the United Federation of Teachers and the Council of Supervisory Associations or had otherwise failed to take appropriate action to enforce recognition of the rights of teachers and other professional personnel and to provide protection from unlawful intimidation or harassment.

SIXTH: That the COMMITTEE had no direct power to conduct formal disciplinary hearings or other proceedings against school officers or employees but could after investigation issue appropriate orders to the then New York City Superintendent of Schools for remedial or curative action.

SEVENTH: That on or about January 1, 1969, plaintiff filed a complaint with said COMMITTEE, charging, in substance, that she had been harassed and discriminated against by her Assistant Principal and by other school officials; annexed thereto and incorporated herein as Exhibit A is a synopsis of said complaint prepared by a member of the staff assigned to said COMMITTEE.

EIGHTH: That defendant NORMAN FRANKEL, a senior investigator employed by the New York State Education Department was assigned to investigate plaintiff's charges of intimidation and harassment; that annexed hereto

and incorporated herein as Exhibits B through I, respectively, are copies of interoffice memoranda prepared in the normal course of business reflecting the staff consideration and ultimate rejection of plaintiff's complaint.

NINTH: Upon information and belief, that defendants herein did not act in an arbitrary or capricious manner by refusing to take further formal action with respect to plaintiff's claims of harassment but acted in good faith in the normal course of State business.

AS AND FOR A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE DEFENDANTS ALLEGE:

TENTH: Upon information and belief, that State officers, agents and employees may not be sued in their individual capacities for acts done in the normal course of State business in their representative capacities.

AS AND FOR A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE DEFENDANTS ALLEGE:

ELEVENTH: Upon information and belief, that plaintiff complains of action taken over two years ago; that the purported cause of action should be barred by laches or by the appropriate statute of limitations for the review of State administrative conduct.

AS AND FOR A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE DEFENDANTS ALLEGE:

TWELFTH: Upon information and belief, that this Court has no federal jurisdiction over the subject matter of the purported controversy alleged to exist between plaintiff and the named defendants herein.

AS AND FOR A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE DEFENDANTS ALLEGE:

THIRTEENTH: Upon information and belief, that the complaint does not state a claim upon which relief may be granted against the named defendants herein.

WHEREFORE, defendants, the STATE SUPERVISORY COMMITTEE, NORMAN FRANKEL and HAROLD G. ISRAELSON, demand judgment dismissing the complaint of plaintiff, together with the costs and disbursements of this action.

Dated: Albany, New York
November 3, 1971

Yours, etc.,

ROBERT D. STONE,
Attorney for Defendants,
State Supervisory Committee,
Norman Frankel and Harold G. Israelson,
(John P. Jehu and Lawrence W. Reich, Esq., of Counsel),
Office and P.O. Address,
State Education Building,
Albany, New York 12224,
518-474-8864.

John P. Jehu, an attorney duly authorized to practice before this Court certifies that he has read the annexed pleading: that to the best of his knowledge, information and belief there is good ground to support it: and that it is not interposed for delay.

s/ JOHN P. JEHU.

State of New York,
County of Albany. } ss.:

John P. Jehu being duly sworn deposes and says that he is Associate Counsel to the Commissioner of Education and makes this verification on behalf of defendant, the State Supervisory Committee; that the State Supervisory Committee was established by the then Commissioner of Education as an administrative agency of the State Education Department; that your deponent is familiar with the contents of the within answer and that such material is drawn from the official records of the Department and of said Committee; that deponent knows the within allegations to be true from such official records, except as to those matters stated to be alleged upon information and belief and that as to those matters deponent believes them to be true.

s/ JOHN P. JEHU.

Sworn to before me this 3rd day of November, 1971.

LAWRENCE W. REICH,
Notary Public,
State of New York,
Qualified in Albany County,
Term Expires March 30, 1973.

Exhibit A

NEW YORK STATE EDUCATION DEPARTMENT
STATE SUPERVISORY COMMITTEE
00035

REPORT OF COMPLAINT.

PRIORITY: RUSH✓ DATE: 1/ 3/69 HOUR.....
Complete in duplicate RECEIVED BY: Jos. Tocci

Name of Person calling: Ruth Buck
Home Add: 133-54 Avery Ave., Flushing, L.I., N.Y.
Home & bus. tel.
(Home) LE 9-1085 (Bus) 647-2100
Name of Person making complaint: As above
Home Add: .....
Home & bus. tel. .....
School: Franklin K Lane H.S.
Add: Jamaica Ave. & Dexter Ct.
Tel.: 647-2100
Was Principal notified: .....

Description of incident: (include names of all persons involved in incident, what was said and by whom, what was done and by whom).

Mrs. Buck called alleging that as a result of being a non-striking teacher, she is being harassed and discriminated against by Mrs. Cohen, the Asst. Principal of Franklin K. Lane H.S. Complainant is a Guidance Counselor and as of Nov. 29, 1968, her case load was changed, which change is inimical to her interests. Prior to Nov. 29th, complainant had a case load of 1,596 students. The other Guidance Counselors, Mrs. Gradistein, had 1,204, Mrs. Mason had 1,480 and Mr. Epstein had 1,175. Subsequent to Nov. 29, 1968, complainant's case load was changed and is now 2,270. Mrs. Gradistein's case load remained constant. Mrs. Mason's case load was reduced to 1,057 and Mr. Epstein's was reduced to 824. Complainant's case load was increased to 2,270. Complainant alleges that the other three Guidance Counselors were strikers and she was a non-striker and this is the reason for her being discriminated against.

Complainant further alleges there are five other incidents of harassment which she will explain in detail to the investigator when he interviews her.

In addition to her home number, complainant may be reached at AP 7-3260.

Exhibit B

THE UNIVERSITY OF THE STATE OF NEW YORK

The State Education Department

Date: January 8, 1969

To: Francis X. Doherty

From: Norman Frankel

Subject: Ruth Buck, Guidance Counselor, Franklin K. Lane High School District 19, Queens, Superintendent Elizabeth O'Daly—charging harassment by Mary Cohen, Assistant Principal and Administrative Assistant in charge of Guidance with condonment by Morton Selub, Principal.

On January 3, 1969, Mrs. Buck telephoned the State Supervisory Committee charging harassment and discrimination. A report of this complaint was taken by Joseph Tocci and is now in the files. On Monday, January 6, I visited this high school in Queens. I initially contacted the principal's office and arranged to first see Mrs. Buck. I further made an appointment to confer with both Principal Selub and Assistant Principal Cohen on January 7.

Mrs. Buck had initially prepared a four-page memorandum, dated December 4, 1968, entitled "Harassment of Non-strikers". This memorandum was originally sent to James E. Allan, Jr.; the entire Board of Education of the City of New York; the Superintendent of Schools; District Superintendent O'Daly, and to Selub and Cohen.

Mrs. Buck informed me that she had been advised by the State Education Department that she might submit her charge of harassment to the State Supervisory Committee and she was therefore proceeding in such direction. She has re-dated her original memorandum of harassment to January 6, 1969, has addressed it to the State Supervisory Committee and furnished me with a copy which would constitute the basis for her charges. I have identified this memorandum as Exhibit I and it is attached hereto.

Before discussing the details involved in the harassment charges, I set forth information furnished to me by Mrs. Buck regarding her official position at the school and some of the procedures which she stated are in force. Mrs. Buck is a guidance counselor, having been selected from the regular, first list of guidance counselors, which had been promulgated by the Board of Education. She has been a teacher in the school system since 1957 and a guidance counselor since 1964. She started as a counselor in the Franklin Lane High School in September, 1964. In September of 1965, she was switched to Bryant High where she remained until January, 1967. She stated that there was a retrenchment policy in the Franklin Lane High School which necessitated her re-assignment. She took a maternity leave from January, 1967, until June of 1967. Finally, she was once more re-assigned to Franklin Lane High School as of September, 1967. She informed me that there are seven counselors in the school. Four are assigned to cover the years 9th, 10th, 11th, and 12th grades; with three on special projects. The Special Projects group is not involved in the harassment problem, and we need not go into the details of

the assignments. Mrs. Buck stated that after a counselor is assigned to a school year, he remains with his students throughout their high school career. In other words, counselors rotate so that the counselor who starts with the freshmen year then goes for the succeeding year to the sophomore class. The counselor who had the senior class starts again with a freshmen class.

It is important to remember that for the first two years of high school life a student is classified not by credits received, but by the class he would have reached had he finished all his credits. In order to reach the junior year, it is necessary for a student to have sufficient credits to be so classified. Since each year is broken into two sections, freshmen are classified as PG 1 and 2, sophomores as PG 3 and 4, juniors as PG 5 and 6, and seniors as PG 7 and 8. A freshman can earn up to 10 credits and then an additional 8 credits for each of the next three years. A student requires 32 credits to graduate.

Let us analyze the charges of harassment as stated by Mrs. Buck in her memorandum. There are 5 lessor charges with a key charge that she is being deliberately overloaded with cases which might require student guidance. From the figures which she submits, the 9th year counselor started, in the Fall of 1968, with a potential case load of 1204 students but continued with this same case load after the November 29, 1968 decision by Cohen to change the arrangement. The 11th year counselor, who started with 1480 students within the load, had this reduced to 1057. The senior counselor started with 1175 students within the load and had this reduced to 824. Mrs. Buck contends that as 10th year counselor with an

original case load of 1596 students, she received an additional overloading so that after November 29, 1968, her load was 2270 students. Mrs. Buck then informed me that starting September, 1968, the 9th year counselor was handling the PG 1 and 2, that she was handling the PG 3, that the 11th year counselor was handling the PG 4 and 5, and that the 12th year counselor was handling the PG 6, 7, and 8. (This seemed inconsistent with the more normal arrangement whereby each counselor would handle the two PG numbers constituting the full year.)

I then asked Mrs. Buck what was the actual number of active cases which she was holding. She stated that none of the counselors kept a log and that she would have to count the pending cases. She did so and said that she had approximately 475. I then asked her where she secured all her statistics as to students within loads. She said that one of the clerks in the record room had given her this information.

Mrs. Buck stated that the announcement to shift the loads was made without warning at a guidance meeting held on November 29, 1968, which was attended by Mrs. Cohen and the seven counselors. Mrs. Buck objected to this move and claimed that her student load was heavy enough. It is Mrs. Buck's contention that Mrs. Cohen "attempted to cover herself" by then stating that students having less than 5 credits would be shifted from the sophomore counselor, Mrs. Buck, down to Mrs. Gradstein, the 9th year counselor. (In one isolated case in October, 1968, Mrs. Cohen had assigned a student, Valenti who had no credits, to Mrs. Buck. Mrs. Cohen was now reversing her position. It is Mrs. Buck's contention that there are very few students with less than 5 credits that can be sent back to the 9th year counselor.)

I will discuss the minor questions of harassment after I submit Mrs. Cohen's direct answer to the statistics and charge of overloading.

I met with Mrs. Cohen in the principal's office on January 6, 1969. Since she had received a copy of Mrs. Buck's memorandum of harassment, she was familiar with all the charges and she had prepared an answer to them. She stated that the figures which had been furnished to me and which had been submitted in the written memorandum *were absolutely incorrect.* She had an official record, showing the total register of all students in the school. As of September, 1968, the number of students which would constitute the class of PG 1 and 2 was 982 and not the 1204 which Mrs. Buck shows as the approximate number of students within the load for counselor Gradstein. The students in PG 3, as of September, 1968, were 1443, and not the 1596 which Mrs. Buck states was her student load. The PG 4 and 5 counselor had 1392 students, in those grades and not 1480. Mr. Epstein in the PG 6, 7, and 8 had 1022, and not 1175.

IT IS IMPORTANT TO NOTE THAT MRS. COHEN ENDEAVORED TO PROPERLY BALANCE OUT THE POTENTIAL CASE LOADS TO REFLECT THE NORMAL ARRANGEMENT WHEREBY EACH GUIDANCE COUNSELOR TOOK ON THE RESPONSIBILITY FOR A FULL YEAR OF GRADE. THIS WAS FURTHER CORRECTED SO THAT THERE WOULD BE NO IMBALANCES BY

CLEARLY STATING THAT STUDENTS WITH LESS THAN FIVE CREDITS WHO WOULD NORMALLY BE CONSIDERED SOPHOMORES WOULD REMAIN IN THE POTENTIAL STUDENT LOAD OF THE FRESHMAN GUIDANCE COUNSELOR.

Breaking this down into figures, Mrs. Cohen furnished me with the following: As of November 29, 1968, Mrs. Gradstein, the 9th year guidance counselor, had a student register of 1205 pupils. To this must be added those students in PG 3 who had less than 5 credits. They totaled 460. To this must be further added the PG 4 students who had less than 5 credits. They totaled 187. THIS MEANT THAT MRS. GRADSTEIN, THE FRESHMAN COUNSELOR, WOULD HAVE A POTENTIAL CASE LOAD OF 1852 STUDENTS. (MRS. COHEN STATED THAT THE NUMBER OF STUDENTS IN THE 0 to 5 CREDIT RANGE WAS LARGE AND NOT SMALL AS CLAIMED BY MRS. BUCK.)

Mrs. Buck, rather than having the 2207 potential case load, would only have all the other PG 3 and 4. SHE WOULD HAVE 1090 PLUS 387, or 1477 STUDENTS AS A POTENTIAL CASE LOAD. Mrs. Mason, who would now be handling PG 5 and 6, would continue to have 1004, and Mr. Epstein, who would be handling the PG 7 and 8, would have 780. Mrs. Cohen stated that these figures reflected the normal potential with the largest group in the freshman and the smallest in the senior.

Mrs. Cohen stated that potential, while important, would not reflect the actual amount of work which is performed by a

guidance counselor. There are many factors which decrease the possible work load. For one, the school never has sustained an attendence in excess of 60%. The average attendance for the PG 4 is 25%, the additional grade which reverted back to Mrs. Buck. The highest drop out rate in the school is in the PG 4 class, so that the potential never materializes as actual guidance cases. I asked Mrs. Cohen if it was possible for Mrs. Buck to have an actual case load of 475 cases as she indicated. Mrs. Cohen stated that the actual number of cases would not reflect the amount of work performed or the difficulty involved. She stated that there were many special applications for assignments to special and vocational high schools and that these temporary assignments were given to Mrs. Buck. They were many in number with very little work to be done. Mrs. Cohen stated that intensive counseling, which consists of seeing a student once a week for at least 4 weeks, does not exceed more than 25 cases per guidance counselor. Mrs. Cohen further stated that a guidance counselor cannot handle more than 40 to 50 assignments per week. She states that the official assignments for counseling has been done with great care and fairness, following normal procedures.

I discussed with Mrs. Cohen the minor charges of harassment contained in Mrs. Buck's memorandum. Mrs. Cohen pointed out that while the memorandum prepared by Mrs. Buck was entitled "Harassment of Non-strikers", it is important to note that there is no other non-striker in the school system who has ever made a charge of harassment and that the charges now being made by Mrs. Buck are solely those of the one individual and not of any group of teachers.

With reference to the incident identified as number 1 in her memo, Mrs. Buck contends that on October 1, 1968, she was called into Cohen's office and criticized in front of the other assistant principal, Mr. Todaro, with the implication that Buck had failed to admit students, but was performing personal work. Mrs. Cohen stated that in the morning she asked Mrs. Buck to assist in the admission. Buck had asked to be excused on the grounds that Todaro had asked her to do a big job on reconstructing her time schedule, since the official time card had disappeared. Mrs. Cohen stated that this chore was a very small one and should not have been used as an excuse to avoid helping out on admissions.

In reference to harassment identified as number 2, that information was withheld from Buck concerning the newly made staggered schedule, Mrs. Cohen conceded that there had been a slip up and that Mrs. Cohen had thought that Mr. Epstein had furnished Mrs. Buck with the information.

With reference to harassment number 3, Mrs. Buck contends that she received a phone call from the district office, and endeavored to relay the message in person to Mrs. Cohen. She states that Mrs. Cohen, who was in conference, refused to accept a written note and indicated that the matter was not of such urgency as to interrupt the conference which was being held. Mrs. Cohen stated that the message was not of such moment as to warrant intrusion.

Harassment number 4 as stated by Mrs. Buck is a contention that Mrs. Cohen disturbed Mrs. Buck in the cafeteria and accused Mrs. Buck of sending a student away from Franklin

Lane to another school. Mrs. Buck feels that the matter should have been handled during the normal school activity and that she should not have been disturbed during lunch hour. Mrs. Cohen stated that the matter was of some urgency and she felt that she was well within her rights in speaking to Mrs. Buck during her lunch period.

Harassment number 5 is a statement that Mrs. Cohen, in October, 1968, on a Friday afternoon requested information which needed a great deal of time to secure. Mrs. Buck stated that Mrs. Cohen wanted the information by Monday morning. Mrs. Buck did not feel that this was a reasonable request, even though she doubted that she had not previously furnished the information. Mrs. Cohen stated that Mrs. Buck kept a running log and could have furnished her with the information in 10 minutes.

Although I have only reported the direct statements of harassment, I learned from my discussion with Mrs. Buck that there are several pending matters in which she is involved with school authorities. She has:

1. Directly accused District Superintendent O'Daly of refusing to review what Mrs. Buck considered absurd supervision. This charge is framed in the letter dated December 21, 1968, sent by registered mail to Dr. Bernard Donovan, Superintendent of Schools. I attach a copy of this letter.

2. Mrs. Buck has stated that in June of 1968 she was requested by the school authorities to submit herself for

a psychiatric examination. Mrs. Buck informed me that she engaged legal counsel and that a restraining order was secured prohibiting the Board of Education from proceeding with such medical examination.

I further annex for perusal:

1. Letter dated May 24, 1968, sent to Mrs. Buck by Mrs. Cohen. In the letter, Mrs. Buck is charged with failure to furnish school information to Mrs. Cohen and failure to cooperate in the keeping of appointments, etc.

2. A letter dated December 5, 1968, sent by Superintendent O'Daly to Mrs. Buck indicating astonishment at being bypassed by Mrs. Buck when Mrs. Buck sent the memo charging harassment directly to Dr. Allan.

3. A letter dated December 16, 1968, in which Mrs. Buck replies to Superintendent O'Daly.

4. A letter dated December 27, 1968, from Mrs. Buck to John Doar, President of the Board of Education. She calls his attention to the complaint which she made against District Superintendent O'Daly.

5. A form used by the school to refer cases to the Guidance counselor. This was the form in use in September of 1967 and shows that Mrs. Buck at that time had PG 1 and 2, Mrs. Mason had PG 3 and 4, Mr. Epstein had PG 5 and 6, and Mrs. Bejamin had PG 7 and 8.

NF:kd
Encl.

Exhibit C

The University of the State of New York
THE STATE EDUCATION DEPARTMENT

To: Francis X. Doherty Date: January 8, 1969
From: Norman Frankel
Subject: Ruth Buck of Franklin K. Lane High School harassment by Mary Cohen, Assistant Principal (Continuing report)

On January 8, at approximately 12:30 P.M., Mrs. Buck telephoned our State offices using MU7-3513. She asked me if I wished to talk to her regarding my interview with Mrs. Cohen. She also wanted to know what our procedures were in handling her complaint. I indicated to her that as investigator I had given her an opportunity to present her full story, and that thereafter, as she was advised at the time, I conferred with Mrs. Cohen for her answer to the charges. I stated that it was not my responsibility to evaluate, but to present the facts to my superiors. She then asked that I furnish her with a copy of my report. I informed her that I had no authority to do this. She then inquired whether I had included in the report the information which she had voluntarily given me to the effect that the school authorities had requested a psychiatric examination, but that she had by private counsel procured a restraining order against such a move. I informed her that this information had been told to me by the principal of the school and that I had included it in my report without further comment. She stated that I should not have put this into my report. I informed her that it was my responsibility to place in my report all facts furnished to me and that I had no dis-

cretion. She then asked me if I had included in the report reference to a letter dated January 6, 1969, which she had received on January 7 which had been sent to her by Mrs. Cohen as head administrative assistant in charge of guidance. I informed Mrs. Buck that though she had showed me this letter, it appeared to be a request by the guidance office for reports on three students, and that since this would be a normal school procedure, it should not be included in the harassment charges as presented. Mrs. Buck then requested permission to speak to Mr. Tocci and Mr. Tocci thereafter spoke with her. He finally indicated that after he read my report, he would be in a better position to talk to her.

Exhibit D

The University of the State of New York
THE STATE EDUCATION DEPARTMENT

To: Francis X. Doherty Date: January 20, 1969
From: Mr. Norman Frankel
Subject: FILE 00035 Ruth Buck—Franklin K. Lane High School Alleged Harassment by Mary Cohen, Ass't. Principal

Since Mrs Buck had telephoned and spoken to Mr. Tocci, it was originally planned that I would revisit the school to give Mrs. Buck the opportunity of a rebuttal. However, Mrs. Buck telephoned our office and stated that she was preparing a lengthy memorandum, but in the interim would send us a copy of the letter which she received from Mrs. Cohen and her answer dated Jan. 17th. We have received this material.

Copies of her letter to Mrs. Cohen have been sent to the Commissioner of Education, the State Supervisory Committee, the Supt. of Schools, the District Supt. of Lane High School and the Principal of the high school. I attach this material to this report.

In her letter to Mrs. Buck, dated Jan. 13th, Mrs. Cohen furnished Mrs. Buck with the statistical information which she already furnished to the State Supervisory Committee and which is incorporated in my report dated Jan. 8th. In addition, she charges Mrs. Buck with being unfamiliar with guidance counsel procedures, with being contentious and once again acting in an insubordinate manner.

In her reply to Mrs. Cohen dated Jan. 17th, Mrs. Buck states that she will analyze the statistical material and prepare a full report. In addition, she includes a matter which arose in the early summer of '68. It is Buck's contention that on two occasions she asked the Principal of the school for instructions in handling the case of a student, Albert Hess, but she received no cooperation.

Comments:

Your investigator respectfully submits that there is nothing in this rebuttal that changes the earlier conclusions that there is no evidence of real harassment. We shall check the additional rebuttal which Mrs. Buck will submit to see whether there is any change in our conclusions.

N. FRANKEL

NF:hc
Att.

Exhibit E

The University of the State of New York
THE STATE EDUCATION DEPARTMENT

To: Mr. Francis X. Doherty Date: Jan. 22, 1969
From: Mr. Norman Frankel
Subject: FILE No. 00035—Ruth Buck, teacher—Guidance Counselor Franklin K. Lane High School Alleged Harassment by Mary Cohen, Ass't Principal

SUMMARY

There are several minor charges of harassment with one key issue involving a deliberate overloading of guidance counseling cases. The minor charges consist of:

1. Improper courtesies by administration for failure to assist in (admission) duties.

2. Failure to furnish teacher with work schedule.

3. Improper criticism by Ass't. Principal who misinterpreted urgency of a written note which was being delivered by complainant.

4. Discussion of official matter during a lunch period as a deliberate harassment.

5. Unreasonable request by administration for guidance information giving short notice.

(These charges involve routine school procedures and our Committee has been informed by Mrs. Cohen, the Ass't. Principal, that actions taken by the school officials were reasonable and within the discretion of the administration.)

In submitting statistical information to this Committee, the complainant indicated that arbitrarily her original case load was jumped from 1,596 to 2,270 and that this is completely out of line with guidance counseling for other grades. This accusation was answered by the school authorities by submitting to this Committee official information covering student registration and actual case work assigned to each guidance counselor. We are advised that what is identified as case load by Mrs. Buck is of no significance since in actuality, this is a student register. We are further advised that by a special ruling, students lacking credits are removed from Buck's potential case load so that in actuality, the maximum source for her work would be 1,447 students.

There is nothing arbitrary in the assignment of guidance work to each of the grade guidance counselors.

N.F.

NF:hc

1/24/69—For committee but await additional rebuttal from complainant

JT

Exhibit F

The University of the State of New York
THE STATE EDUCATION DEPARTMENT

To: Francis Doherty Date: January 30, 1969
From: Norman Frankel
Subject: Franklyn K. Lane High School

Alleged harassment of Ruth Buck, Guidance Counselor, by Mary Cohen, Assistant Principal.

We are continuing to receive from Mrs. Buck copies of correspondence between herself and the assistant principal, Mary Cohen. There are charges and countercharges which do not in any way effect the gravamen of the complaint. Buck has charged the administration with discriminatory assignment of guidance work. The administration has furnished a statistical reply to indicate that the assignments to all guidance counselors are in accordance with precedent and normal procedures.

Although Mrs. Buck continues to state that she is preparing elaborate statistic evidence, our committee has decided to finalize this matter. I have been instructed to see Mrs. Buck, and then endeavor to bring this investigation to a conclusion.

NORMAN FRANKEL

2/5/69
Await interview report with Buck.

JT

Exhibit G

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

To: Francis X. Doherty Date: February 12, 1969
From: Norman Frankel
Subject: Alleged harassment of Ruth Buck, Guidance Counselor, by Mary Cohen, Assistant Principal File No. 35

CONTINUING

We have finally received by registered mail, a three-page letter dated February 5, 1969, and sent by Buck to Cohen, with copies to Mr. John Doar, Reverend Galamison, Dr. Donovan, District Superintendent O'Daly, and Principal Morton Selub. One must refer primarily to the letter dated January 13, Cohen to Buck, and to other letters dated January 17, 23, and 24. Copies of these letters are included in this case report. Mrs. Buck now specifically comments or corrects all aspects of the January 13 letter and refutes Cohen's contention that the assignment of guidance work was proper and in accordance with precedent and reasonable discretion.

CONCLUSION: Except for the charge by Mrs. Buck that she has been unfairly overloaded with guidance cases, other matters deal with routine administrative assistant/teacher relationships, which would not constitute harassment as defined by the State Supervisory Committee. Insofar as the charge of overloading, the Assistant Principal, Cohen, has officially stated and furnished statistical material, to make our a prima facie case of acceptable school procedures refuting allegations of Mrs. Buck. It is the administration's position that

Mrs. Buck has acted in an insubordinate manner and is endeavoring to befuddle this main issue by charging harassment. It is recommended that the Committee read this file to see whether it does not agree with the consultant's opinion that there is insufficient evidence to warrant a charge of harassment against the Assistant Principal.

N. FRANKEL

encl:
kd

Exhibit H

The University of the State of New York

THE STATE EDUCATION DEPARTMENT

To: Mr. Francis X. Doherty Date: March 6, 1969
From: Norman Frankel
Subject: Alleged harassment of Ruth Buck—Guidance Counsellor, Franklin K. Lane High School—by Mary Cohen, Asst. Principal in charge of guidance. SSC No. 35.

On March 4, 1969, I had a joint conference with Admin. Assistant Mary Cohen and Ruth Buck, the guidance teacher. We met in the office of Mrs. Cohen at the Franklin K. Lane High School.

The main issue is whether or not, after the recent school strike, which extended to November 18, 1968, Buck was deliberately given a greater assignment of guidance work than

the other three teachers with whom she handles the student guidance for the year 1 to 4.

Several points were discussed so that some judgment could be given by the State Supervisory Committee.

First. Can we cancel the variants in the figures identified by Buck as "original caseload" of students with the schools (Cohen's) "Official enrolment of students".

Second. Are these figures relevant to the issue of alleged harassment.

Third. What other factors would be more material in determining whether actual harassment existed.

As far at the first point is concerned, Cohen conceded that the official enrolment at the beginning of the September, 1968, school year could have been increased by new admissions and discharges to meet the Buck figures. after Buck conceded that her original "before" statistics were taken on or about November 28, 1968, just prior to the change in assignment. Buck conceded that "after" figures did not take into account students in the PG. 3 and 4 grades who had less than 0.5 credits and who had not, originally, been seen by Buck. It is conceded by both sides that this, the 0.5 group, had been shifted back to the PG.1 and 2 Grade Guidance Teacher Gradstein. Buck estimated this return group as approx. 300 and not the 650 as estimated by Cohen.

(Cohen's statistical procedure was by the averaging method. She took 5 PG.3 A.M. classes, 5 PG.3 P.M. classes and 5 PG.4 A.M. classes and then counted for students with 0 to 5 credits. She took a mean average and multiplied by the

number of the official classes. Buck stated that she, in fact, counted 0.5 credit students but does not have the exact figure. She further did not know how many of the 0.5 students she had seen originally).

Let us proceed to the second point:—

Cohen insists that student enrolment represents a vague potential and does not reflect actual caseload. She defines caseload as actual work being performed. Buck contends that "potential" representing "possibility" should be the test. Cohen stated that, in accordance with normal school procedures, each guidance teacher should have a full year. This means that year 1 should include PG.1 and 2; Year 2 should have PG.3 and 4: etc. Cohen states that this was the previous years assignment, when Buck had PG.1 and 2 and Mason had PG.3 and 4. Cohen, therefore, endeavoured to correct the guidance procedures on November 29, 1968, to such normalcy. As a balance factor Cohen provided that those PG.3 and 4 students who had less than five credits would be retained by the PG.1 and 2 teacher. COHEN STATED AND BUCK ADMITTED HAVING RECEIVED THE INSTRUCTION THAT THE GUIDANCE GROUP ON NOVEMBER 29 WAS INFORMED THAT, IF ANY TEACHER FOUND AS A RESULT OF THE POTENTIAL THAT THERE WERE TOO MANY CASES TO BE HANDLED, COHEN WOULD MAKE NECESSARY ADJUSTMENTS TO EQUALIZE GUIDANCE TASKS. (Your staff consultant believes that this stated policy by the school administration clearly removes any charge of harassment at this point of the assignment).

Now for the third point:

Cohen insists that the actual guidance work performed or charged against a teacher must be the test of how much work a guidance teacher does. Buck states that this is irrelevant since there is a potential that looms ahead.

Cohen states that a guidance teacher can do only so many cases a day and that no-one is asked to do more. Guidance work is limited, with the counsellor have a great deal of automony. Cohen informed me that, on December 6, 1968, when she received the Buck statement of "caseload", she asked Buck to furnish her with the number of active case referrals since November 29, 1968. Buck conceded that such a request had been made and that she did not respond thereto. Cohen further asked Buck to furnish the number of referrals from September 1, 1968, to January 1969. Buck finally gave the school administration this figure on March 3, 1969. She stated that the number was 119 plus a few others. I asked Buck to tell me how many students she sees each day. At first she stated that such information was immaterial. Later she stated that she was not prepared to supply figures at this time. She then requested time to prepare her answer. I told her to confine her answer to the actual guidance work which she performed.

Before concluding this report we await Buck's reply for analysis.

N.F.

NF:pj

Await reply J.T.

Exhibit I

The University of the State of New York

THE STATE EDUCATION DEPARTMENT

To: Francis X. Doherty Date: April 14, 1969

From: Norman Frankel

Subject: Alleged harassment of Ruth Buck Guidance Counselor Franklin K. Lane High School—Mary Cohen, Assistant Principal in charge of Guidance. File No. 35

Refer to report dated March 6. I concluded that there was no basis for Buck's contention that she had been deliberately overloaded with guidance work by the school administration. This was the only important issue.

The reason this case was held open was that at the March 4, 1969, joint conference, I had asked Mrs. Buck how many students she saw each day as a guidance counselor. Since she then stated that she needed some time to prepare a reply, she was given permission to write to us—but only on this one point.

Her April 4 letter, attached, is typical of Mrs. Buck's attempts to confuse the issue by bringing in extraneous matters. First, she states she is not happy with the State Supervisory Committee acknowledgement; it was not personally signed by Israelson and was back-dated to the time when her complaint was received. Then, she would like a business card of the investigator, even though I had told her on at least a dozen ocassions who I was and what my title was. She then makes a general complaint against the Principal and also one against

the District Superintendent. She does not answer the question which I had posed to her, but re-states some statistics which we had previously analyzed. Finally, she once again brings up the earlier request which she had made for tape recordings of conferences, which had been refused by the school administration. She closes by making a self-serving declaration that her case is of great merit and that if the State Supervisory Committee will not, or cannot, handle it, recommendation must be made to other authority. She assumes that the case will be set for hearing.

I do not think this letter, which is in violation of the arrangements, should be answered. Nothing contained therein changes my conclusion that there is no evidence of harassment.

N.F.

encl.

NF:kd